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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JERRY LAMARR HOLLOWAY,

Defendant and Appellant.

E061524

(Super.Ct.No. FSB1005118)

OPINION

APPEAL from the Superior Court of San Bernardino County. Ronald M. Christianson, Judge. Affirmed as modified.

Robert V. Vallandigham, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal, Deputy Attorney General, for Plaintiff and Respondent.

Defendant Jerry Holloway is serving three years in prison after having his probation revoked for possessing cocaine. Defendant challenges the imposition of a \$300

parole revocation fine because the court had already imposed a \$200 restitution fine when it initially placed him on probation. The People concede, and we agree, that the parole revocation fine must be reduced to \$200 pursuant to Penal Code section 1202.45,¹ which requires the parole revocation fine to be set at the same amount as the restitution fine imposed pursuant to section 1202.4, subdivision (b). In addition, we order the judgment modified to reflect that the trial court did not erroneously raise the restitution fine to \$300 from the \$200 that was imposed when defendant was originally placed on probation.

FACTS AND PROCEDURE

On January 26, 2011, the People filed an information charging defendant with possessing marijuana for sale (Health & Saf. Code, § 11359) and resisting an executive officer (§ 69). The People further alleged that defendant had two prior strike convictions (§ 1170.12, subds. (a) – (d)) and a prison term prior (§ 667.5, subd. (b)).

On March 11, 2011, defendant pled guilty to possessing marijuana for sale and the remaining charge and allegations were dismissed.

On April 11, 2011, the trial court granted defendant probation for three years, with one of the conditions that he served 209 days in jail, with credit for 209 days served. Other conditions included a \$200 restitution fine and a \$200 suspended probation revocation fine.

¹ All section references are to the Penal Code unless otherwise indicated.

On January 27, 2014, a sheriff's deputy conducting a traffic stop of defendant's vehicle found a small glass vial containing white powder in defendant's left sock. The powder was sent to the lab and found to be cocaine in salt form.

On January 30, 2014, the People filed a motion to revoke defendant's probation based on his arrest for possessing cocaine.

On June 30, 2014, the trial court found defendant to be in violation of probation and revoked probation.

On July 1, 2014, the court imposed the upper term of three years on the original marijuana possession charge from 2011, along with a \$300 suspended parole revocation fine (§ 1202.45).²

This appeal followed.

DISCUSSION

Defendant argues, the People concede, and we agree, that the parole revocation fine should be reduced to \$200 because, under section 1202.45, it must be the same amount as the \$200 restitution fine originally imposed when defendant was placed on probation in 2011. In addition, the abstract of judgment must be modified to reflect that the trial court did not erroneously revise the restitution fine upward to \$300.

“A restitution fine imposed at the time of conviction and granting of probation remains the same despite a future revocation of probation. Therefore, when probation is

² The record transcript shows the court imposed a \$300 parole revocation fine. The clerk's transcript and the abstract of judgment incorrectly show the court also imposed a \$300 restitution fine.

revoked, the trial court has no authority to impose a second restitution fine in a greater amount than the original fine. [Citation.]” (*People v. Garcia* (2006) 147 Cal.App.4th 913, 917.) “In every case where a person is convicted of a crime and his or her sentence includes a period of parole, the court shall at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional parole revocation restitution fine *in the same amount* as that imposed pursuant to subdivision (b) of Section 1202.4.” (§ 1202.45, italics added.)

DISPOSITION

We order the judgment modified show that both the restitution fine and the parole revocation fine are imposed at \$200 each. In all other respects the judgment is affirmed.

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GAUT

J.*

We concur:

MILLER

Acting P. J.

CODRINGTON

J.

* Retired Associate Justice of the Court of Appeal, Fourth Appellate District, Division Two, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.